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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,118	07/11/2003	Pierluigi Pugliese	Pugliese 31	4099
47384 7590 12/24/2009 RYAN, MASON & LEWIS, LLP 90 FOREST AVENUE LOCUST VALLEY, NY 11560				
EXAMINER HICKS, MICHAEL J				
ART UNIT 2165		PAPER NUMBER		
MAIL DATE 12/24/2009		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/618,118

**Applicant(s)**

PUGLIESE, PIERLUIGI

**Examiner**

MICHAEL J. HICKS

**Art Unit**

2165

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-24, 26, 32-36, 38-40, 42 and 44-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-24, 26, 32-36, 38-40, 42, and 44-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Claims 22-24, 26, 32-36, 38-40, 42, and 44-49 Pending.

Claims 1-21, 25, 27-31, 37, 41, and 43 Canceled.

***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/16/2009 has been entered.

***Response to Arguments***

3. Applicant's arguments, see response, filed 10/16/2009, with respect to the rejection(s) of claim(s) 22-24, 26, 32-36, 38-40, 42, and 44-49 under USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Smyth et al. (U.S. Pre Grant Publication Number 2003/0065706 A1, filed 5/10/2002).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 22-24, 26, 32-36, 38-40, 42, and 44-49 rejected under 35 U.S.C. 102(e) as being anticipated by Smyth et al. (U.S. Pre Grant Publication Number 2003/0065706 A1, filed 5/10/2002 and referred to hereinafter as Smyth).

As per Claims 22, 34, and 38, Smyth discloses a processor-implemented method, electronic device, and article of manufacture of rearranging a plurality of menu items within a menu structure of a user interface (See Abstract, which clearly indicates that the menu structure of a website is modified.), the method comprising the steps of: collecting data about respective selection rates of the menu items within a current menu structure (See Paragraphs 46, 57, 60-61, which clearly indicate that selection rates of menu items (e.g. links) are collected and used, at least in part, to calculate a new menu structure.); calculating a new menu structure based on the collected data about the respective selection rates of the menu items within the current menu structure (See Paragraphs 46, 57, 60-61, which clearly indicate that selection rates of menu items (e.g. links) are collected and used, at least in part, to calculate a new menu structure.); and replacing the current menu structure with the new menu structure See Paragraph 64, which clearly indicates that the current menu structure is replaced by the new menu

structure.); wherein user approval of menu alteration is obtained via the user interface prior to completion of the replacing step (See Paragraphs 47 and 53, which clearly indicate that user approval is obtained through the user specifying that pages may be moved in the menu structure prior to the alteration.); wherein the method further comprises the step of concurrently displaying the entire new menu structure to the user prior to completion of the replacing step (See Paragraph 64, which clearly indicates that the entire new menu structure is displayed to the user upon menu item selection. Examiner notes that the user may opt to alter the user settings to disallow the promotion/alteration of specific pages after the display of the new menu structure.); wherein the user approval comprises user approval of the new menu structure as displayed See Paragraph 64, which clearly indicates that the entire new menu structure is displayed to the user upon menu item selection. Examiner notes that the user approval is implicit after according to the promotion/alteration options specified by the user.); wherein the menu items are arranged within a plurality of functional groupings within each of the current menu structure and the new menu structure (See Paragraph 34, which clearly indicates that the menu items are arranged in a hierarchical menu structure (e.g. functional groupings of menus and associated sub menus).); wherein a first one of the plurality of functional groupings is a submenu displayed responsive to a selection of at least one menu item within a second one of the plurality of functional groupings (See Paragraph 34, which clearly indicates that the menu items are arranged in a hierarchical menu structure (e.g. functional groupings of main menus and associated sub menus).); and wherein at least one menu item is within the first one of the plurality of functional groupings in the current menu structure and is within the second one of the plurality of functional groupings in the new menu structure (See Paragraph 34, which clearly indicates that

the menu items in the sub-menus may be promoted into positions in higher hierarchical menus (e.g. their associated main menus).).

As per Claims 23, 35, and 39, Smyth discloses the user approval is obtained prior to completion of the collecting step (See Paragraphs 47 and 53, which clearly indicate that user approval is obtained through the user specifying that pages may be moved in the menu structure prior to the alteration.).

As per Claims 24, 36, and 40, Smyth discloses the user approval is obtained prior to completion of the calculating step (See Paragraphs 47 and 53, which clearly indicate that user approval is obtained through the user specifying that pages may be moved in the menu structure prior to the alteration.).

As per Claim 26, Smyth discloses the user approval comprises the selection of a specified menu item (See Paragraphs 47 and 53, which clearly indicate that user approval is obtained through the user specifying that pages may be moved in the menu structure prior to the alteration. Examiner notes that specific pages may be approval for promotion/alteration by the user.).

As per Claims 32, 46, and 48, Smyth discloses the threshold is predefined (See Paragraph 46, which clearly indicates that the hit threshold is defined as a system option prior to menu alterations occurring.).

As per Claims 33, 47, and 49, Smyth discloses the threshold is selected by the user (See Paragraph 46, which clearly indicates that the hit threshold is user defined.).

As per Claims 42, 44, and 45, Smyth discloses the calculating step further comprises the step of calculating a difference between the new menu structure and the current menu structure (See Paragraph 65, which clearly indicates that a difference between the current (e.g. last) menu structure and new menu structure is calculated based.); wherein the difference is a number of menu items in the new menu structure that have no corresponding match in the current menu structure (See Paragraph 65 and related discussion, which clearly indicates that the number of items which are being replaced by promoted items is calculated.); and wherein the displaying step is executed only if the calculated difference exceeds a threshold, the threshold being a number of menu items greater than or equal to two (See Paragraph 46, which clearly indicates that a hit threshold may be set to two.).

### ***Points of Contact***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Hicks whose telephone number is (571) 272-2670. The examiner can normally be reached on Monday - Friday 9:00a - 5:30p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Neveen Abel-Jalil can be reached at (571)272-4074. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Hicks/  
Examiner, Art Unit 2165

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